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STATE OF WASHINGTON

Appeal No. 46776-3-II

BY Ca
DEPUTY

COURT OF APPEALS, DIVISION II,

OF THE STATE OF WASHINGTON

Richard Severson,

Appellant,

v.

The Department of Social and Health Services,

Respondent.

BRIEF OF APPELLANT

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A. INTRODUCTION

This case involves the standing for judicial review on a child neglect finding by the DSHS. The appellant is without legal counsel as he cannot afford one, and one was never appointed. The appellant's son received an accidental bruise and his forehead 2cm in size with no broken skin. This is the size of a US penny. The appellant won this case in front of an independent tribunal, the Office of Administrative Hearings on 12-7-2012. The DSHS review judge, an employee representing the DSHS, reversed the initial order on the basis of a 7 inch gash that does not, and never existed.

The DSHS has the medical record which proves this, and the appellant provided this record in part, in new evidence to the superior court. By using the non-existent 7 inch gash the DSHS review judge using State v. Sims, went to the rules of evidence 803(a) (4), an exception to the hearsay rule to change the findings of fact and conclusion of law. There was no direct witness, only hearsay statements which were not sworn to. The appellant was not allowed to speak at his own hearing to help defend himself. The final decision is also based on unlawfully submitted evidence by the DSHS, and the decision did not stay within the confines of the June 12, 2012 controlling order as to what the DSHS allegations were limited to. There are only numerous lies by the DSHS employees including the review judge himself. The trial court erred in finding the review judge made no errors of law and findings of fact.

Brief of appellant - 1

B1. ASSIGNMENTS OF ERROR

1. The trial court erred in entering its September 12, 2014 order. (C.P. 1103).
2. The trial court erred by not granting the appeal. (Judicial review) (V.R.P. Sept. 12, 2014 Pg. 32 at 8).
3. The trial court erred by not allowing new evidence. (V.R.P. Sept. 12, 2014 Pg. 11 at 4 - Pg. 12 at 20).
4. The trial court erred by not having the DSHS board of appeals provide its legal authority to decide their own cases. (V.R.P. July 11, 2014 Pg. 2 at 7-20) (V.R.P. Sept. 12, 2014 Pg. 19 at 20-25, Pg. 20 at 1-2).
5. The trial court erred by supporting the decision of the DSHS board of appeals judge, who is by definition of law, an employee representing the DSHS. (V.R.P. Sept. 12, 2014 Pg. 32 at 4-8).
6. The trial court erred by not providing a jury trial. (V.R.P. July 11, 2014 Pg. 2 at 7-20) (V.R.P. Sept. 12, 2014 Pg. 19 at 20-25, Pg. 20 at 1-2).
7. The trial court erred by not allowing a motion for contempt. (V.R.P. Sept. 12, 2014 Pg. 8 at 25 – Pg. 9 at 1).
8. The trial court erred by finding that the DSHS representative and the OAH ALJ not showing up for the September 10, 2012 in person hearing did not create a default. (V.R.P. Sept. 12, 2014 Pg. 30 at 3-10).

Brief of appellant-2

9. The trial court erred in relying in evidence that was unlawfully submitted by the DSHS in violation of a stipulation and a controlling order. (V.R.P. Sept. 12, 2014 Pg. 14 at 3-4).
10. The trial court erred by not supporting the constitutions and the constitutional issues brought before the court in the appellant's brief, reply to DSHS response, motions submitted to the trial court, and oral argument. (V.R.P. Sept. 12, 2014 Pg. 26 at 4-10).
11. The trial court erred by stating "I don't believe that", when the appellant said the medical records show that Ms. Floyd had a scratch and not a 7 inch gash. (V.R.P. Sept. 12, 2014 Pg. 10 at 20 – Pg. 11 at 4).
12. The trial court erred in finding the DSHS review judge did not make an error of law. (V.R.P. Sept. 12, 2014 Pg. 30 at 21-23).
13. The trial court erred in finding that the findings of fact by the DSHS review judge are supported by substantial evidence. (V.R.P. Sept. 12, 2014 Pg. 30 at 23-25).
14. The trial court erred by not addressing the assignments of error in the appellants brief filed May 2, 2014 on an individual basis. (V.R.P. Sept. 12, 2014 Pg. 26 at 4-10, Pg. 2 at 17-22).
15. The trial court erred by finding assignment of error No.1 of appellant's brief filed May 2, 2014 was procedural issue and

not a violation of law and constitutional right. (Right to speak). (V.R.P. Sept. 12, 2014 Pg. 2 at 17, Pg. 26 at 4-10).

16. The trial court erred by finding assignment of error No.2 of appellant's brief filed May 2, 2014 was a procedural issue and not a violation of law and constitutional right resulting in a mistake of fact. (DSHS review judge changing findings of fact and conclusion of law). (V.R.P. Sept. 12, 2014 Pg. 2 at 17-22, Pg. 26 at 4-10).
17. The trial court erred by finding that assignment of error No.3 of appellant's brief filed May 2, 2014 was a procedural issue and not a violation of law and constitutional right resulting in a mistake of fact. (DSHS exhibits unlawfully allowed into the record). (V.R.P. Sept. 12, 2014 Pg. 2 at 17-22, Pg. 26 at 4-10).
18. The trial court erred by finding that assignment of error No.4 of appellant's brief filed May 2, 2014 was a procedural issue and not a violation of law and constitutional right. (DSHS review judge changing initial order based on unlawful exhibits). (V.R.P. Sept. 12, 2014 Pg. 2 at 17-22, Pg. 26 at 4-10).
19. The trial court erred by finding that assignment of error No.5 of appellant's brief filed May 2, 2014 was a procedural issue and not a violation of law and constitutional right. (DSHS review judge not reviewing the whole complete record). (V.R.P. Sept. 12, 2014 Pg. 2 at 17-22, Pg. 26 at 4-10).

20. The trial court erred by finding that assignment of error No.6 of appellant's brief filed May 2, 2014 was a procedural issue and not a violation of law and constitutional right. (DSHS review judge false statement that the petitioner requested a determination of adequacy and appropriateness of ALJ's findings of fact). (V.R.P. Sept. 12, 2014 Pg. 2 at 17-22, Pg. 26 at 4-10).
21. The trial court erred by finding that assignment of error No.7 of appellant's brief filed May 2, 2014 was a procedural issue and not a violation of law and constitutional right resulting in a mistake of fact. (DSHS review judge states the DSHS sent their notification letter on 2-4-2011). (V.R.P. Sept. 12, 2014 Pg. 2 at 17-22, Pg. 26 at 4-10).
22. The trial court erred by finding that assignment of error No.8 of appellant's brief filed May 2, 2014 was a procedural issue and not a violation of law and constitutional right. (Wrong standard of proof is applied). (V.R.P. Sept. 12, 2014 Pg. 2 at 17-22, Pg. 26 at 4-10).
23. The trial court erred by finding that assignment of error No.9 of appellant's brief filed May 2, 2014 was a procedural issue and not a violation of law and constitutional right. (DSHS review judge applies the wrong standard of proof). (V.R.P. Sept. 12, 2014 Pg. 2 at 17-22, Pg. 26 at 4-10).
24. The trial court erred by finding that assignment of error No.10 of appellant's brief filed May 2, 2014 was a procedural issue and not a violation of law and constitutional right. (No

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jury is provided, whole constitutional rights and liberty are in jeopardy) (V.R.P. Sept. 12, 2014 Pg. 2 at 17-22, Pg. 26 at 4-10).

25. The trial court erred by finding that assignment of error No.11 of appellant's brief filed May 2, 2014 was a procedural issue and not a violation of law and constitutional right. (DSHS review judge is an employee of, and representing the DSHS, cannot be an impartial and disinterested tribunal) (V.R.P. Sept. 12, 2014 Pg. 2 at 17-22, Pg. 26 at 4-10).

26. The trial court erred by finding that assignment of error No.12 of appellant's brief filed May 2, 2014 was a procedural issue and not a violation of law and constitutional right. (The DSHS and the new ALJ did not show up for the Sept. 10, 2012 in person hearing creating a default) (V.R.P. Sept. 12, 2014 Pg. 2 at 17-22, Pg. 26 at 4-10).

27. The trial court erred by finding that assignment of error No.13 of appellant's brief filed May 2, 2014 was a procedural issue and not a violation of law and constitutional right. (DSHS review judge does not stay within the confines of the June 12, 2012 controlling order on what the allegations by the DSHS are limited to) (V.R.P. Sept. 12, 2014 Pg. 2 at 17-22, Pg. 26 at 4-10).

28. The trial court erred by finding that assignment of error No.14 of appellant's brief filed May 2, 2014 was a procedural issue and not a violation of law and constitutional right. (DSHS review unlawfully goes to the rules of evidence, when

Brief of appellant - b

there was evidence presented that kept him from going outside of his authority, Ms. Floyd's medical records and 22 page written argument by appellant provided twice to the record) (V.R.P. Sept. 12, 2014 Pg. 2 at 17-22, Pg. 26 at 4-10).

B2. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court error in concluding that the appellant lacked standing to seek judicial review under the APA RCW 34.05 of an adverse decision made by the DSHS board of appeals review judge, when the appellant was clearly prejudiced and had a statutory right to judicial review under RCW 34.05.530 (1) (2) (3) standing, and RCW 34.05.570 (d) judicial review? (Assignments of error numbers 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19, 20,21,22,23,24,25,26,27,28).
2. Did the trial court error in concluding that the DSHS review judge had the lawful right to go to the rules of evidence 803(a) (4), while the DSHS maintained in the record Ms. Floyd's medical records? (Assignments of error numbers 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19, 20,21,22,23,24,25,26,27,28).
3. Did the trial court error in concluding that the DSHS board of appeals has the lawful right to decide their own cases involving child neglect? (Assignments of error numbers 1,2,3,4,5,10,12,14,16,25).

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4. Did the trial court error by not allowing the appellant to address and file a motion of contempt at the trial?
(Assignments of error numbers 1,2,7,10,11,14,19,20,26,28).
5. Did the trial court error in concluding that the appellant's new evidence, RCW 34.05.0562 (1) (a) (b) did not meet standards required by statute? (Assignments of error numbers 1,2,3,7,8,12,13,19,26,28).
6. Did the trial court error by not having the DSHS board of appeals provide its legal authority? (Assignments of error numbers 1,2,4,5,14,15,25).
7. Did the trial court error in concluding that the appellants right to speak and participate in his own hearing which was taken from him, was a procedural issue rather than a constitutional right? (Assignments of error numbers 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28).
8. Did the trial court error in concluding that the DSHS board of appeals review judge made no error in law or findings of fact? (Assignments of error numbers 1,2,8,9,10,12,13,14,15,16,17,18,21,27,28).
9. Did the trial court error in concluding that the appellant's representation had the right to stipulate away valuable rights of the appellant? (Assignments of error numbers 1,2,8,9,10,12,13,15,16,17,18,21,26,27).

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10. Did the trial court error in concluding that the review judge did not have to review the whole entire record as a matter of law and constitutional right of the appellant? (Assignments of error numbers 1,2,3,8,9,10,11,12,13,14,15,16,17,18,19,21, 26,27,28).
11. Did the trial court error in concluding that the DSHS exceeding the ninety days maximum for its investigation was a procedural issue rather than a violation of constitutional rights? (Assignments of error numbers 1,2,12,13).
12. Did the trial court error in concluding that the standards of proof used in the case was a procedural issue rather than a constitutional violation? (Assignments of error numbers 1,2,12,13,22).
13. Did the trial court error in concluding that the DSHS and ALJ not showing up for the in person hearing on September 10, 2012 did not create a default? (Assignments of error numbers 1,2,8,12,13).
14. Did the trial court error by not making a distinct ruling on each error raised in the appellants brief filed May 2, 2014? (Assignments of error numbers 1,2,12,13).

C. STATEMENT OF THE CASE

A statement of the case can also be seen in;

(Brief filed 5-2-2014 Pg. 12-40)(C.P.), (Reply filed 6-20-14 Pg. 44-91)(C.P.).

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On 12-21-2010 in the early morning hours, Ms. Floyd and Christian were going to ride the bus to Renton, and the appellant was going to ride the bus to Puyallup for a work first program with DSHS. They all missed the bus. Ms. Floyd having control of the stroller was not going home in hope that the bus would still come. It was dark and 34 degrees outside. Ms. Floyd removed one hand from the stroller and the appellant took the stroller and went home. Ms. Floyd's purse was on her wrist on her other hand which was still on the stroller. When the appellant took the stroller Ms. Floyd's purse fell to the ground. Outside of the home Ms. Floyd ran to the appellant upset that he had taken the stroller. In the altercation the appellant lost his balance and fell over, the stroller tipped over as a result, which is how the appellant's son got the 2cm bruise. 2cm is the size of a US penny, and he had no broken skin.

Investigation

The investigation by the DSHS started before the referral is made by 7 hours and 40 minutes. The DSHS initiated its investigation around 8:00am. Testimony of DSHS social worker Ms. Luckhurst. (V.R.P. Oct. 1, 2012 Pg. 23 at 18-19)(Initial order Pg. 3 at 4.5 (000281)(C.P.). The referral was made by Good Samaritan Hospital social worker Ms. Inselman. DSHS exhibit 8 Pg. 4 (000342) (C.P.). The DSHS received the referral on 12-21-2010 at 3:49pm. DSHS exhibit 6 Pg. 1 (000327) (C.P.). The appellant had called the DSHS to let them know that he could not make it to the work first program and why.

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Notification Letter/Certified Mail

The appellant received a certified letter dated 4-15-2011. DSHS exhibit 2 Pg. 1 (000323) (C.P.). The envelope that the letter of notification came in is dated April 15, 2011 (000246) (C.P.). The founded neglect letter is dated February 4, 2011, DSHS exhibit 1 Pg. 1 (000317) (C.P.). Both the initial order Pg. 6 at 4-24 (000284) (C.P.) and the final order Pg. 8 at 20 (000151) (C.P.) both state in their findings of fact that the DSHS mailed the finding on February 4, 2011. The only mention of the date is in the (V.R.P. Oct. 1, 2012 Pg. 6 at 9), "Notification letter dated February 4, 2011", the notification letter does not cite any legal authority.

Prehearings

The DSHS continues the case for 18 months on the good cause grounds of the criminal case pending.

Sixth Prehearing

June 12, 2012 sixth hearing conference by phone with OAH ALJ Haenle. Judge Haenle states that she cannot see what Mr. Severson did or did not do, and that she is taking notes. These notes have never been provided by the DSHS. DSHS representative Ms. Bartlett makes false statements to the judge while referring to the file:

1. The Pierce county sheriff's office was not the referent.
2. The criminal case was dismissed without prejudice.

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3. The mother was holding the child while the father assaulted her.

Ms. Bartlett is denied a telephone hearing and is requested to set up the hearing and reserve a room at the attorney general's office in Tacoma. An order is issued that incorporated the February 22, 2012 order. New evidence submitted by the appellant has the audio of the June 12, 2012 sixth prehearing which is a short hearing.

Orders

June 12, 2012 order (000294)-(000296) (C.P.).

February 22, 2012 order (000303)-(000306) (C.P.).

The June 12, 2012 order Pg. 2 at 3.3 (000295) (C.P.) limits the allegations by the DSHS to the allegations that the mother was holding the child while Mr. Severson assaulted her.

The DSHS has the mother holding the child.

The DSHS has the father holding the child.

The child, was in his stroller.

The June 2012 order which was stipulated to by the DSHS has the deadline for the DSHS exhibits as July 31, 2012.

In Person Hearing September 10, 2012

The appellant is the only person to show up for the hearing and is confirmed by the sign in sheet from the attorney general's office (Pg. 8 of new evidence) (C.P. **913**) as well as in the audio from the September 10, 2012 in person hearing which was provided in new

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evidence at (11:41-12:10), (13:31-14:21). The attorney general's office calls the office of administrative hearings and later ALJ Henke and DSHS representative Mr. Brown (Ms. Bartlett's husband) call on the phone. The appellant was given a room at the attorney general's office as one was not reserved. The appellant objects to the DSHS exhibits (audio Sept. 10, 2012 at 9:55-10:29 which are numbered 1 through 9 at this time).

The appellant objects to being the only person there and requests a dismissal (audio Sept. 10, 2012 11:41-12:10, 13:31-14:21). The appellant is silenced from speaking by the new ALJ Henke. (Audio Sept. 10, 2012 at 10:29-11:00/11:23-12:00/22:52-23:02). Ms. Darby hired by the appellant, after he relived Mr. Sutherland, reappears after not calling in for the June 12, 2012 sixth pre hearing by phone from Colorado and requests the S.E.R's from the DSHS (audio Sept. 10, 2012 at 5:00-8:30). Mr. Brown, the DSHS representative is to provide the S.E.R's to Ms. Darby (audio Sept. 10, 2012 at 5:00-8:30). Mr. Brown states the nine exhibits plus the three witnesses is the final list for the DSHS (audio Sept. 10, 2012 3:53-4:30/14:38-15:04, 23:27-23:32). Mr. Brown is requested to reserve the room at the attorney general's office for the Oct. 1, 2012 in person hearing (audio Sept. 10, 2012 at 22:17-22:45). OAH ALJ Henke sets up the hearing for the Oct. 1, 2012 in person hearing (audio Sept. 10, 2012 at 21:40-22:00).

October 1, 2012 In Person Hearing

The appellant Mr. Severson shows up for the Oct. 1, 2012 in person hearing at the attorney general's office as directed by his

notice, (new evidence Pg. 6) (C.P. 911). No room has been reserved and no other parties are there, as can be seen by the sign in sheet from the attorney general's office (new evidence Pg. 9) (C.P. 914). As the appellant, Mr. Severson starts to sign in, he is told the hearing is being held at the Office of Administrative Hearings, he is given directions and scrambles to try to make the hearing so he does not lose by default.

Appellant, Mr. Severson objects to the DSHS exhibits (V.R.P. Oct. 1, 2012 Pg. 10 at 18- Pg. 11 at 3). The DSHS adds exhibits 10 and 11 on Sept. 24, 2012 (order on motion to dismiss Pg. 4 at 4.21) (000267) (C.P.) (V.R.P. Oct. 1, 2012 Pg. 8 at 12-23). This is four business days prior to the hearing. These exhibits are S.E.R's which the DSHS had in their possession for almost two years at this point in time. Mr. Brown, the DSHS representative refers to his file and states August 20th um, I'm assuming timely done, referring to the DSHS exhibits and witness list. (V.R.P. Oct. 1, 2012 Pg. 8 at 12-17). Mr. Brown, states "in terms of the criminal case that really has no bearing on whether this matter can go forward or not". (V.R.P. Oct. 1, 2012 Pg. 8 at 24 – Pg. 9 at 1).

This turns the DSHS good cause for continuing the case for almost two full years on its head. Ms. Darby does not speak to me before allowing the DSHS exhibits into the record which was against my objection. (V.R.P. Oct. 1, 2012 Pg. 12 at 9-15). This was clearly the appellant's intent and objection. (V.R.P. Oct. 1, 2012 Pg. 10 at 18/ Pg. 11 at 3). The appellant, Mr. Severson is not allowed to speak to help defend his self (V.R.P. Oct. 1, 2012 Pg. 9 at 16/ Pg. 10 at 8). OAH ALJ Henke allows for written argument (V.R.P. Oct. 1, 2012

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Pg. 10 at 24 – Pg. 11 at 3). Mr. Severson sends in a 22 page written argument on 10-10-2012. Initial order Pg. 2 at 3.7 (000280)(C.P.).

Initial Order Mailed December 7, 2012

(000279) – (000292), (C.P.) – (C.P.).

The decision is based upon the fact that the DSHS has the burden to establish by a preponderance of the evidence that Mr. Severson committed neglect and/or maltreatment of Christian.

5.7 In this case the only evidence presented by the DSHS that Mr. Severson committed neglect of Christian by committing an assault on Ms. Floyd while holding Christian was solely based on hearsay statement and not corroborated by direct evidence. Based upon the credible evidence that established Mr. Severson was defending himself and protecting Christian from Ms. Floyd's assault. (Initial order Pg. 11 at 5.7 Conclusion of Law) (000289) (C.P.).

5.8 Based upon the evidence presented at the hearing, Mr. Severson's actions did not create a substantial risk of injury to Christian's physical and emotional wellbeing, therefore Mr. Severson's actions did not constitute neglect treatment nor maltreatment of Christian as defined by WAC 388-15-009(5). This matter should be remanded to the DSHS for a change of the finding consistent with this ruling. (Initial order mailed 12-7-12 Pg. 11 at 5.8 Conclusion of Law) (000289) (C.P.).

It is here by ordered:

6.1 The department did not properly find that Richard Severson neglect treated or maltreated his son according to the referral received on or about Dec. 21, 2010.

6.2 The department's founded finding of neglect treatment or maltreatment against Richard Severson is reversed. (Initial order mailed 12-7-12 Pg. 12 at 6.1-6.2) (000290) (C.P.).

Request for Review By DSHS

(000270) – (000271), (C.P.) – (C.P.).

The DSHS representative Ms. Bartlett makes a false statement of fact in her request for review by stating, "This proceeding involves an appeal of determination by the department that the appellant committed an act of physical abuse of a minor child". (Petition for review Pg. 2) (000271) at authority. DSHS notification letter dated Feb. 4, 2011 (000038) (C.P.) physical abuse unfounded. DSHS envelope with certified mail (000040) (C.P.).

The DSHS did not bring up the issues it cites in their petition for review at the hearing which basically provides the DSHS with a second hearing with no one present except for their own judge who is an employee representing the DSHS.

DSHS representative Ms. Bartlett makes a false statement of fact in her petition for review (petition for review Pg. 1 at 25-26) (000270) (C.P.) and Pg. 2 at 1 (000271) (C.P.) by stating "The department submits that the statements rejected as hearsay by the

ALJ should have been relied upon as they were not objected to and were admitted by agreement and stipulation into the hearing record”.

Mr. Severson objected to the exhibits by the DSHS. (V.R.P. Oct. 1, 2012 Pg. 10 at 18-23) “Incorrect”, “timeliness of discovery”, “deadlines”. (V.R.P. Oct. 1, 2012 Pg. 17 at 2-3) “Falsified documents”. Ms. Darby challenged the DSHS exhibits. (V.R.P. Oct. 1, 2012 Pg. 15 at 13-14) “Accurate” (Pg. 15 at 17-20) “legitimacy” (Pg. 15 at 21-24) “incorrect information”.

Motion for Denial of Review

(000188) – (000268), (C.P.) – (C.P.).

Fax transmission (000033) (C.P.) date 1-16-2012, time 1:12:02pm, Identification No. (1-360-664-6187).

Priority mail receipt (000034) (C.P.).

DSHS board of appeals stamped received Jan. 18, 2013, which is late for the record. (000188) (C.P.).

Noticed received from the DSHS after motion for denial of review (000187) (C.P.) we will make a decision based upon that record.

Petition to Have the DSHS Review Motion for Denial of Request for Petition

(000173) – (000184) (C.P.) – ().

DSHS notice (00172) (C.P.).

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Mr. Severson disqualifies DSHS BOA review judge James W. Conant in his petition.

Review Judge to Review Whole Entire Record

The review judge is mandated to review the whole entire record by the use the word “shall” (WAC 388-02-0600) (1) and (RCW 34.05.464) (5).

The distinction between directory and mandatory statutes is the violation of the former is attended with no consequences, while the failure to comply with the requirements of the latter rather “invalidates” purported transactions or subjects the non-complier to affirmative legal liabilities.

Niichel v. Lancaster, 97 Wn.2d 620.647 P.2d 1021 (1982). The petition for review by the DSHS cites the record (000270) – (000271) (C.P.) – (C.P.).

Pg. 1 Evidence relied upon; ... and upon the “record” and “pleadings” contained in the “file”.

Pg. 1 Relief requested; ... and for supplemental findings and conclusions as required by the “record”.

Pg. 2 Authority; ... and based upon the “entire record”.

The Record Is

RCW 34.05.476 and RCW 34.05.566(1) because the review judge is mandated to review the whole entire record these laws and rules apply to what the record are:

RCW 34.05.556(1), WAC 388-02-0195(1), WAC 388-02-0010, WAC 388-02-0512, WAC 388-02-0015.

Because WAC 388-02-0015 compares terms, the term adjudicative proceeding as applied in RCW 34.05.476(1) would mean that prehearings and the entire hearing process is a part of the record as the legislators felt it was an important part of the hearing process to have prehearings recorded by establishing WAC 388-02-0195(1).

Caretaker of the Record

The DSHS board of appeals is the caretaker of the record. RCW 34.05.461(2), WAC 388-02-0515(3), WAC 388-01-030(1).

Medical Records

The DSHS board of appeals has in its possession, Ms. Floyd's medical records as part of the record in this case. Testimony of DSHS social worker Ms. Luckhurst (V.R.P. Oct. 1, 2012 Pg. 28 at 24- pg. 29 at 2) (reply filed 6-20-14 Pg. 40) (C.P. 1015) (V.R.P. Sept. 12, 2014 Pg. 13 at 8-12)

Review Decision and Final Order Mailed April 19TH, 2013

(000144) – (000171) (C.P.) – (C.P.), Final order Pg. 14 at 9 (000157) (C.P.).

The review judge states what he reviewed:

- Audio record of the hearing.
- The documents admitted as exhibits.

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- The initial order.
- The departments petition for review.
- The appellants response and request for denial of the petition for review to determine the adequacy and appropriateness of the findings of fact (FOF) made by the ALJ in the initial order.

The appellant, Mr. Severson never made any mention of the adequacy and appropriateness of the findings of fact by the ALJ for the review judge to determine.

Basis of DSHS Board of Appeals Review Judge for Changing the Finding of the Initial Order

DSHS board of appeals judge changed the finding based upon a 7 inch gash in Ms. Floyds shoulder, this gash never existed, and the records maintained by the DSHS board of appeals show it to be a scratch.

The DSHS review judge used this false statement made by the DSHS to go to the rules of evidence 803(a) (4), an exception to the hearsay rule.

The appellants 22 page written argument provided on 10-10-2012 and again in the appellant's motion for denial of review on 1-16-2013 prohibit the review judge from going to the rules of the ER by themselves.

The fact that the gash only existed on paper, as product of creative writing by the DSHS, further makes the use of the rules of evidence an unlawful action by the DSHS.

State v. Sims, 77 Wn. App. 236, 239, 890 P.2d 521 (1995) is cited by the review judge as his legal authority (final order Pg. 20-21) (000163) – (000164) (C.P.) – (C.P.).

Under foot note 70 Pg. 20 (000163) The DSHS review judge makes the false statement of fact by stating;

The appellant did not challenge the admission, authenticity or accuracy of the police report or hospital record at the hearing or on review, and that the department's evidence regarding procurement of the police and hospital records went unchallenged.

Petition for Review Motion for Denial of Request for Review

(000173) – (000184) (C.P.) – (C.P.).

The appellant had disqualified DSHS board of appeals review judge prior to his final decision Pg. (00018) (reply filed 6-20-14 Pg. 75) (C.P.).

D. ARGUMENT

A. Controlling Laws and Rules

WAC 388-15-109 (What laws and rules will control the administrative hearing regarding the founded CPS findings?) Chapter 34.05 RCW, RCW 26.44.100 and 26.44.125, chapter 388-02 WAC and the provision of this chapter... In the event of a conflict between the provisions of this chapter and chapter 388-02 WAC the provisions of this chapter must prevail.

(Brief filed 5-2-14) (C.P.) (Reply filed 6-20-14 Pg. 23) (C.P. ~~998~~)

B. Constitutional Rights

A constitutional right is clearly established where the contours of the right have been defined with specificity and sufficient clarity as a result of decisional law or statute so that a reasonable official would have known that his conduct violated the constitutional right.

Gausvik, 126 Wn. App. 868 (2005) at 888 citing Saucier, 533 US 194 (2001) at 202.

(Brief filed 5-2-14 Pg. 26) (C.P. ~~761~~)

C. Due Process

The legislative reaffirms that all citizens shall be afforded due process, RCW 26.44.100(1). Due process is violated where a practice fails to those “fundamental concepts of justice which lie at the base of our civil and political institutions and which define a community’s sense of fair play and decency”.

U.S. v. Lovasco, 431 U.S. 783, 790 (1977)

Brown v. State of Mississippi, 297 US 278, 286 (1936).

(Brief filed 5-2-14 Pg. 26-27) (C.P. ~~761~~
~~762~~).

“The due process clause entitles a person to an impartial and disinterested tribunal in both civil and criminal settings”

Marshall v. Jerrico Inc., 446 US 238, 242 (1980).

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The principle of impartiality is as old as the court. It is the fundamental idea and it is acknowledged inviolability of this principal that gives credibility to justice decrees".

State ex rel Barnard v. Bd. Of Educ., 19 WASH.8, 17-18 (1898).

(Brief filed 5-2-14 Pg. 36-37) (C.P. ⁷⁷¹~~772~~).

D. DSHS Board of Appeals Review Judge

The DSHS Board of Appeals review judge is defined by law as an employee representing the DSHS, as can be seen in WAC 388-02-0010 definitions which defines; "BOA", "department", "DSHS", "DSHS or department representative", and "review judge". As an employee representing the DSHS he cannot be an impartial or disinterested judge in the case, which is a violation of due process and the appellants constitutional right to an impartial and disinterested tribunal.

(Brief filed 5-2-14 Pg. 36) (C.P. ⁷⁷¹~~772~~), (Reply filed 6-20-14 Pg. 83) (C.P. ~~1057~~), (V.R.P. Sept. 12, 2014 Pg. 24 at 11 - Pg. 25 at 25).

Cannon 1 judges shall uphold the integrity and independence of the judiciary.

Cannon 2(a) judges should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Cannon 3 judges shall perform the duties of their office impartially and diligently, (a) adjudicative responsibilities, (1) judges should be faithful to the law and maintain professional competence in it...

(Reply filed 6-20-14 Pg. 20-21) (C.P. ⁹⁹⁵₉₉₆).

It is the duty of the courts to be watchful for the constitutional rights of the citizens, and against any stealthy encroachments there on.
Mapp v. Ohio, 367 US 643 (1961).

E. Review of Agency Decision

[1] The administrative procedure act, chapter 34.05 RCW, governs our review of agency decisions.

Burnham v. Dept. of Social & Health Servs., 115 Wn. App. 435, 438, 63 P.3d 816, review denied, 150 Wn. 2d 1013 (2003). "We apply the standards of RCW 34.05 directly to the record before the agency, sitting in the same position as the superior court".

City of Redmond v. Cent. Puget Sound Growth Mgmt. hearing Bd., 136 Wn. 2d 38, 45, 959 P.2d 1091 (1998).

(Reply filed 6-20-14 Pg. 28) (C.P. ¹⁰⁰³).

[2] This court reviews the interpretation of statutes and implementing regulations under the error of law standard, pursuant to which the court may substitute its judgement for that of the agency, although substantial weight is accorded to the agency's to the extent the subject matter falls within the agency's area of expertise. Northwest Steelhead and Salmon Council of Trout

Unlimited v. Department of Fisheries, 78 Wn. App. 778, 78, 78 Wn. App. 1000, 896 P.2d 1292 (1995).

Aponte v. DSHS, 92 Wn. App. 604, 623, 965, P.2d 626 (1998) at 616 [2].

[3-6] If an enabling statute does not authorize a particular regulation, either expressly or by necessary implication, that regulation must be declared invalid.

[15-16] DSHS also argues that because the review judge has the authority under the WAPA to limit the issues subject to review, the agency has discretion to limit review. We disagree. It is well stated that administrative rules cannot amend or change legislative enactments.

Univ. of Wash v. Manson, 98 Wn. 2d 552, 562, 656 P.2d 1050 (1983) .

Kabbae v. DSHS, 144 Wn. App. 432, 192, P.3d 903 (2008).

(Reply filed 6-20-14 Pg. 27-28) (C.P. ¹⁰⁰²/₁₀₀₃).

The Office of Administrative Hearing was created by the legislators as an independent and impartial agency. In a case of child neglect the finding is made by the DSHS. It is then upon request reviewed by the DSHS, then upon request it is decided upon after a hearing in front of the Office of Administrative Hearings by the administrative law judge from the OAH. It then goes back to the agency that initiated the finding for the final order. This is clearly a violation of due process RCW 34.05.464 review of initial orders states as authorized by law the agency head may appoint a person

to review the initial order WAC 388-02-0010 cites RCW 34.05.464 as an enabling statute. There is no authorizing law for the DSHS to decide their own cases, and it is clearly a violation of due process under the fourteenth amendment of the United States constitution. Article VI of the United States constitution states in part; ... shall be the supreme law of land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

F. Legal Aid

RCW 2.53.005 (Findings) the legislature finds that the provisions of civil legal aid services to indigent persons are an important component of the state's responsibility to provide for the proper and effective administration of civil and criminal justice. The legislature further finds that state funded legal aid services should be administered by an independent office of civil legal aid located within the judicial branch and subject to formal continuing oversight that includes bipartisan legislative representation.

The appellant tried to get help from the court facilitator in the court house in Tacoma upon filing for judicial review and was told they do not do appeals and reviews, and the appellant's \$20 was mailed back to him by the court clerk's office. This appointment was scheduled for 3:00pm on 5-28-2013 with a \$20.00 payment to Rm. 110.

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G. The Investigation Exceeded the Ninety Days Maximum
for its Investigation

The DSHS investigation of child neglect exceeded the 90 days maximum allowed by WAC 388-15-021(7), and upon the completion of their investigation the DSHS has to send the notice of the finding by certified mail WAC 388-15-069(1).

(Brief filed 5-2-14 Pg. 13-14) (C.P. ⁷⁴⁸~~749~~)

This is a constitutional violation of due process. The investigation started on 12-21-2010 at 8:00am. (V.R.P. Oct. 1, 2012 Pg. 43 at 10) and ended with the certified mail on 4-15-2011. DSHS exhibit 2 (000323) (C.P.) and the envelope the notice came in dated April 15, 2011 (000246) (C.P.).

H. Controlling Orders

June 12, 2012 (000294) – (000296)

Feb. 22, 2012 (000303) – (000306)

The June 12, 2012 sixth prehearing order controls the proceedings. Pg. 3 at 3.7 and 4.1 (000293) (C.P.).

I. Exhibits

The DSHS must pre file its witness list, proposed exhibits, and exhibits list by July 31, 2012. Pg. 2 at 3.5 (000295) (C.P.).

The DSHS sent their exhibits list numbers 1-9 on Aug. 20, 2012, twenty days past their deadline.

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(Brief filed 5-2-14 Pg. 18) (C.P. ~~753~~), (V.R.P. Oct. 1, 2012 Pg. 8 at 12-13).

The DSHS further added exhibits 10 and 11 on Sept. 24, 2012, four business days before the hearing.

(Reply filed 6-20-14 Pg. 59) (C.P. ~~1033~~).

(Order on appellant's motion to dismiss Pg. 4 at 4.21) (C.P.), (V.R.P. Oct. 1, 2012 Pg. 8 at 12-23)

Exhibits 10 and 11 were never provided to the appellant as required by RCW 34.05.437(3), WAC 388-02-0045, WAC 388-02-0055.

J. Stipulation

The deadlines for exhibits, exhibit list and witness list was stipulated to by the DSHS in the June 12, 2012 sixth prehearing. Pg. 1 at 3 (000294) (C.P.) in agreements, which states; in conference, the parties agreed to the following: This stipulation in the controlling order also applies to 3.3 on Pg. 2 (000295) (C.P.), Issues: The department alleges that on Dec 21, 2010, Mr. Severson assaulted the mother of the child Christian (born Feb. 2, 2010) when she was holding the child, resulting in an injury to the child and the mother. The department contends these actions constituted neglect treatment or maltreatment of a child by Mr. Severson. The basis for the letter dated Feb. 4, 2011. The hearing in this matter will be limited to those allegations.

The DSHS never proved that Mr. Severson assaulted anyone. The DSHS founded letter states that Mr. Severson was holding the child which negates the DSHS ability to find the mother was holding the

child. (My son was in the stroller at the time). The DSHS review judge went outside of his authority with his finding that was not consistent with the controlling order. The appellant objected to the DSHS exhibits in the Sept. 10, 2012 in person hearing and again in the Oct. 1, 2012 in person hearing. (V.R.P. Oct. 1, 2012 Pg. 10 at 18/ Pg. 11 at 3), (Reply filed 6-20-14 Pg. 56) (C.P. ¹⁰³⁰).

The appellant objected to the board of appeals review judge not staying within the confine of the allegations by the DSHS set forth in the June 12, 2012 controlling order. (Brief filed 5-2-14 Pg. 16) (C.P. ⁷⁵¹), (Reply filed 6-20-14 Pg. 35) (C.P. ¹⁰¹⁰).

K. What is a stipulation

WAC 388-02-0405 (what is a stipulation?)

(1) A stipulation is an agreement among two or more parties that certain facts or evidence is correct or authentic.

WAC 388-02-0410 (after the parties agree to a stipulation may they change or reject it?)

(2) To change or reject a stipulation, a party must show the ALJ that:

- a. The party did not intend to make the stipulation or was mistaken when making it; and
- b. Changing or rejecting the stipulation does not harm the other parties.

(Reply filed 6-20-14 Pg. 35-36) (C.P. ¹⁰¹⁰ ₁₀₁₁).

The DSHS never tried to change or reject this stipulation on what the allegations are limited to, which are a product of DSHS representative special assistant to the attorney general's office, Mareen Bartlett, who while referring to her file told the ALJ Heanle those allegations. Audio of June 12, 2012 sixth prehearing through (01:45 - 04:25). All of the DSHS exhibits and witnesses were entered into the record unlawfully. The finding by the DSHS review judge is not confined to the allegations in the controlling order that was stipulated to. The trial judge does not support the appellant's constitutional right to have the DSHS stay within the laws, rules, and a controlling order which greatly prejudiced the appellant. (V.R.P. Sept. 12, 2014 Pg. 14 at 3-23/ Pg. 32 at 4-5).

L. Excludable Evidence

RCW 34.05.452(1) (2) Excludes evidence that is excludable on constitutional or statutory or evidentiary grounds, and only allows for the review judge to go to the rules of evidence if not in consistent with subsection (1).

(Reply filed 6-20-14 Pg. 23) (C.P. **998**).

RCW 34.05.030(5) states; all other agencies, whether or not formally specifically excluded from the provisions of all or part of the administrative procedure act shall be subject to the entire act.

(Reply filed 6-20-14 Pg. 23) (C.P. **998**).

"It is well established that the fourteenth amendment forbids fundamental unfairness in the use of evidence whether true or

false". Blackburn, 361 US 199 (1960), citing Lisenba, 314 US 219 (1941). This is due process issue US v. Lovasco, 431 US 783, 790, (1977), Brown, 297 US 278 (1936).

(Brief filed 5-2-14 Pg. 29) (C.P. **764**).

M. Stipulating Away a Valuable Right of a Client

Appellants hired help, Ms. Darby, allowed the DSHS exhibits into the record without speaking to the appellant. (V.R.P. Oct. 1, 2012 Pg. 12 at 9-15). This clearly went against the appellant's prior objections and intent before the appellant was told he could not speak at his hearing.

(V.R.P. Oct. 1, 2012 Pg. 10 at 18-23/ Pg. 11 at 3), (Sept. 10, 2012 in person hearing audio), (Brief filed 5-2-14 Pg. 28) (C.P. **763**), (Reply filed 6-20-14 Pg. 62) (C.P. **1036**).

"It will be readily admitted that an attorney without special authority has no right to stipulate away a valuable right of his client". Nguyen v. Sacred Heart, 97 Wn. App. 728 (1999) at 735 citing Graves, 94 Wn. 2d (1980) quoting Wagner, 149 WASH.328 (1928).

N. Right to Speak and Participate at Hearing

The appellant was not allowed to speak or participate in the Sept. 10, 2012 in person hearing, and again in the Oct. 1, 2012 in person hearing. Audio Sept. 10, 2012 in person hearing

(V.R.P. Oct. 1, 2012 Pg. 9 at 16/ Pg. 11 at 3/ Pg. 17 at 2-4), (Brief filed 5-2-14 Pg. 25) (C.P. **760**), (Reply filed 6-20-14 Pg. 19) (C.P.) **994**

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These laws and rules show the appellants constitutional right to speak and participate in his own hearing.

WAC 388-02-0005(2), WAC 388-02-0010 "party" (1)(2)(a)(b)(c), WAC 388-02-0430(1)(2)(a)(b), RCW 34.05.428(1)(2), RCW 34.05.437(1)(3), RCW 34.05.499.

(Brief filed 5-2-14 Pg. 25) (C.P. ~~760~~), (Reply filed 6-20-14 Pg. 87 (C.P. ~~1061~~).

O. Erroneous Interpretation and Application of the Law

Relief under RCW 34.05.570(3) (d) for erroneous interpretation and application of the law is reviewed de novo. City of Redmond v. Central Puget Sound Growth Management Hearings Bd., 136 Wn. 2d 38, 45, 959, P.2d 1091 (1998) at 46.

P. Arbitrary and Capricious Agency Action

Arbitrary and capricious agency action is "willful and unreasoning action, taken without regard to or consideration of facts and circumstances surrounding the action". Central Puget Sound, 136 Wn. 2d at 46-47.

[4] An agency acts contrary to law when it fails to abide by the rules which govern it.

Simons, 41 Wn. App. 851 (1985) at [4,5]

By not reviewing the whole entire record DSHS review judge acted contrary to law, which was an erroneous interpretation and

application of the law, as well as being an arbitrary and capricious action.

(Final order Pg.), (C.P.) shows what was reviewed by the DSHS review judge.

By not being allowed to speak and participate in the appellants own hearing to defend himself, is clearly a violation of the governing laws and rules. The DSHS review judge, defined by law as an expert in the department rules, would have known this was clearly a constitutional violation of the appellants rights and by changing the initial order with a back door run using false facts of Ms. Floyds 7 inch gash (which her medical records maintained by the DSHS board of appeals in the record show a scratch), is clearly contrary to law, erroneous interpretation and application of the law as well as being arbitrary and capricious agency action, showing his representation of the DSHS as their employee.

By using evidence that was unlawfully admitted into the record in violation of the controlling order and stipulation, the review judge of the DSHS acts contrary to law, erroneous interpretation and application of the law as well as being arbitrary and capricious agency action.

Q. The Record Is

RCW 34.05.476 (agency records) (1) An agency shall maintain an official record of each adjudicative proceeding under this chapter.

WAC 388-02-0010 (Definitions) "record" means...

WAC 388-02-0195(1) The ALJ must record the prehearing conference using audio equipment...

WAC 388-02-0512 (What is included in the record?)

WAC 388-02-0015 (How do the terms in the administrative hearing act (APA) compare to this chapter?)

RCW 34.05.566(1)... The record shall consist of any agency documents expressing the agency action, other documents identified by the agency as having been considered by it before its action and used as a basis for its action.

(Brief filed 5-2-14 Pg. 30) (C.P. **765**), (Motion for contempt Pg. 35, 36, 37) (C.P. **847**), (C.P. **848**), (C.P. **849**)

The DSHS Board of Appeals is the Caretaker of the Record

RCW 34.05.461

WAC 388-02-0515(3)

WAC 388-01-030(1)

(Brief filed 5-2-14 Pg. 31) (C.P. **766**)

Judicial Review is Confined to the Record

RCW 34.05.558

RCW 34.05.566

(Brief filed 5-2-14 Pg. 31) (C.P. **766**)

Review Judge to Review Whole Entire Record

RCW 34.05.566(1)

WAC 388-02-0600(1)

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The DSHS cited the record in their petition for review. The whole entire record by law needed to be reviewed, and as such the whole entire record needed to be provided for judicial review. RCW 34.05.566 (The DSHS citing to the record is in the statement of the case).

R. The DSHS Has No Special Privileges

WAC 388-02-0005(2) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or rule...

WAC 388-01-015 No provisions in title 388 WAC creates or is intended to create any right or cause of action, nor may anything in the title 388 WAC be relied upon to compel the establishment of any program or special entitlement.

Court Rules

617 "The DSHS is entitled to no special deference regarding the applicability of CR 15 (c), because an agency has no special expertise in interpreting court rules".

Standard of Review/ Burden of Proof

Here to the extent DSHS interprets the regulations at issue as defining a particular standard of review or burden of proof. DSHS's view is not entitled to special deference. CF Russel v. Department of Human rights, 70 Wn. App. 408, 412, 854 P.2d 1087 (1993), review denied, 123 Wn. 2d 1011, 869 P.2d 1085 (1994). Aponte v. DSHS, 92 Wn. App. 604, 623 965 P.2d 262 1998 at 616-617.

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The DSHS has no special exceptions from legal requirements and is entitled no special deference regarding court rules, standard of review or burden of proof.

(Reply filed 6-20-14 Pg. 26-27) (C.P. 1001). (C.P. 1002)

The authority of ALJ and the review judge are limited to those conferred by statute or rule WAC 388-02-0216. Neither an ALJ nor a review judge may decide that a DSHS rule is invalid or unenforceable, WAC 388-02-0225(1).

S. Finding of Fact

A finding of fact made without evidence to support it and a conclusion based upon such a finding is arbitrary. State ex rel Tidewater- Shaver Barge Lines v. Kuy Kendall, 42 Wn. 2d 885, 259 P.2d 838 (1953).

The record not provided by the DSHS supported the fact that Ms. Floyd had a scratch and not a 7 inch gash. The relevant part of the medical record was provided in (new evidence Pg. 2 filed 6-20-14) (C.P. 907).

The basis for the DSHS review judge to the hearsay requirements are established off of a 7 inch gash which does not exist, and the medical records are in the records maintained by the DSHS, which the DSHS review judge was mandated by law to review.

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T. Confrontation of Witness

RCW 10.52.060 provides the right to confront witnesses. (V.R.P. Sept. 12, 2014 Pg. 13 at 3-4). Idaho v. Wright, 497 US 805, 111 L. Ed. 2d 638, 110 S. Ct. 3139 (1990); State v. Florczak, 76 Wn. App. 55, 68-70, 882 P.2d 199 (1994).

(Reply filed 6-20-14 Pg. 39) (C.P. 1014).

There is no one to confront as all of the evidence provided by the DSHS was hearsay without any signed and sworn statements. RCW 9A.72.080 (statement of what one does not know to be true is equivalent to a statement of that which he knows to be false).

U. Standard of Proof

WAC 388-02-0485 (What is the standard of proof?) ... unless the rules or law states otherwise, the standard of proof in a hearing is a preponderance of the evidence.

The clear and convincing standard is applied where the threatened loss due to civil proceeding is comparable to the loss of liberty in a criminal proceeding. Addington v. Texas, 441 US 418 (1979). Nguyen v. Dept. of Health, 99 Wn. App. 96 (1999) at 103.

Liberty has been defined in our supreme court which can be seen in, In Re Lasiter, 84 Wn.2d 135 (1974) at 136. The fundamental nature of parental rights as a liberty protected by the due process clause of the fourteenth amendment was given expression in, Meyer v. Nebraska 262 US 390 (1923) ... To contract, to engage in any of the common occupations of life, to acquire useful

knowledge, to marry, establish a home and bring up children, to worship god...

V. Loss of Rights

With a finding of child neglect a person losses many rights, comparable to criminal proceeding, these lost rights can be seen in some if these laws and rules.

WAC 388-15-017 (6)

WAC 388-15-113(1)

WAC 388-15-001(c) (d)

RCW 26.44.195(4)

RCW 26.44.030(4)

RCW 74.15.130

WAC 388-15-073

Mr. Severson was filling for custody of his son Christian prior to the incident. (V.R.P. Oct. 1, 2012 Pg. 54 at 2-5). The final order Pg. 25 at 29) (000168) (C.P.) shows the appellant is on a registry. (Brief filed 5-2-14 Pg. 33, 34, 35) (C.P. ⁷⁶⁸~~769~~ ⁷⁷⁰), (Reply filed 6-20-14 Pg. 84, 85, 86) (C.P. ~~1058~~), (C.P. ~~1059~~), (C.P. ~~1060~~)

W. Excludable Evidence

RCW 34.05.452 states;

1. ... The presiding office shall exclude evidence that is excludable on constitutional or statutory grounds or on the

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basis of evidentiary privilege recognized in the courts of this state.

2. If not inconsistent with the subsection (1) of this section the presiding officer shall refer to the Washington rules of evidence as guidelines for evidentiary rulings.

The appellants written arguments sent in on Oct. 10, 2012 has laws and decisional laws which exclude the DSHS evidence. (Initial order Pg. 2 at 3.7) (000280) (C.P.) (Final order Pg. 25 at 29) (000168) (C.P.).

This written argument was unlawfully stricken from the record by ALJ Henke on the grounds that the DSHS was unable to respond, while at the same time the appellant is not allowed to speak in his own hearing.

The trial court erred in finding that the DSHS review judge made no errors of law, findings of fact, and that no constitutional rights of the appellant were violated, as the appellant has clearly shown that the whole complete record was to be reviewed by the DSHS review judge, it would then in its entirety have to be provided to the superior court for review.

By not providing the complete record the DSHS is in contempt of court. If the DSHS review judge would have reviewed the whole records as required by law, he would have seen that Ms. Floyd had a scratch and not a 7 inch gash, which would have prohibited him from going to the rules of evidence ER 803(a) (4) by its self, along with written argument by the appellant from

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Oct. 10, 2012 that was provided twice to the record. All of these errors of law are not procedural issues as the trial court judge calls them, but in fact are errors of law resulting in errors of fact. US fourteenth amendment of the constitution.

X. Standing

The appellant had standing RCW 34.05.530 because he was aggrieved and adversely affected by the agency action. The appellant was clearly prejudiced by the DSHS exhibits being unlawfully admitted into the record, by a default and dismissal of the finding not being made in the Sept. 10, 2012 in person hearing which the appellant was the only person to show up for (new evidence Pg. 8-9 filed 6-20-14) (C.P. ⁹¹³₉₁₄). The review decision did not stay within the confines of the June 12 order, not being allowed to speak or participate in his own hearing. The appellants asserted rights to liberty, his son, constitutional protections and rights, loss of employment opportunities, stigma are clearly asserted rights. A judgement in favor of the appellant would substantially eliminate or redress the prejudice caused by the DSHS, DSHS review judge, and the trial court.

Y. Judicial Review

The appellant asserts that under RCW 34.05.570 (judicial review) that in his brief filed 5-2-14, his reply filed 6-20-14 and in the trial Sept. 12, 2014, that he demonstrated the invalidity of the agency action. The appellant further asserts that the constitutional violations shown in the brief, reply and trial clearly prejudiced the

Brief of appellant - 40

appellant. The appellant was never found to have assaulted anyone, the allegations that the appellant assaulted Ms. Floyd are issues presented by the DSHS.

RCW 9A.16.020 (use of force when lawful) gave the right to the appellant to defend himself on 12-21-2010. There were no serious injuries sustained by anyone.

RCW 9A16.110 (defending against violent crimes-reimbursement) (1) reads in part: No person in the state shall be placed in legal jeopardy of any kind what so ever for protecting himself or herself, his or her family, or his or her real personal property...

This process although civil has clearly been legal jeopardy. The appellant has asserted from the very beginning that he was the one who was assaulted. These two laws were part of the appellants 22 page written argument provided twice to the record.

By the trial court not making a separate and distinct ruling on the assignment of error and issues in the appellants brief filed 5-2-2014 as required by RCW 34.05.570(1) (c). The appellant was greatly prejudiced as he had a constitutional right for those issues to be addressed.

The DSHS in their notification letter dated Feb. 4, 2011, DSHS exhibit 1 Pg. 1, 2, 3, do not cite any legal authority other than on Pg. 3 which refers to WAC and chapter 388-15. WAC 388-01-015 clearly states that; no provision in title 388 WAC creates or is intended to create any right or cause of action, or adds to or intends to add to any exiting right or cause of action, nor may anything in

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title 388 WAC be relied upon to compel the establishment of any program or special entitlement.

Short Summary

1. The DSHS does not cite a legal authority in their finding.
2. The DSHS evidence is not lawfully submitted into the record.
3. The DSHS does not show up for the Sept. 10, 2012 in person hearing creating a default.
4. The DSHS only provides hearsay evidence.
5. The DSHS makes many false statements of fact.
6. The DSHS review judge is an employee representing the DSHS.
7. The DSHS maintains the record.
8. The DSHS review judge does not review the whole record as required by law.
9. The DSHS review judge reverses the finding based upon a 7 inch gash that does not exist and is only brought into the record by the DSHS, who maintain the medical record that proves otherwise.
10. The appellant was not allowed to speak or participate to defend himself.
11. The appellant loses many constitutional rights if the finding stands.
12. This is all done without a jury, without being able to defend one's self, and tried by the very agency making the allegations.
13. As the appellant is an indigent person this has been of great consequences to the appellant in trying to defend his rights

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and constitutional protections afforded at the state and federal level.

E. CONCLUSION

The trial court erred both in ruling that the appellant lacked standing to challenge the DSHS review judges illegal participation in ruling on a case of which he is an employee representing the DSHS in a matter that the appellant stands to lose many constitutional rights and liberty, and by not addressing the assignments of error in the appellants brief filed 5-2-2014 as well as not allowing or argument on contempt by the DSHS for not providing a complete whole record, and then stating that based upon the record before her. This court should reverse the trial courts order and enter a finding of unfound to the allegations by the DSHS of child neglect.

The appellant requests that all findings of fact and conclusion of law in the final order to be shown as false as they are clearly hearsay and arrived upon in a manner that is contrary to law which violated the appellants rights under the fourteenth amendment of the constitution of the united states.

The appellant requests that the DSHS to maintain a clear and accurate record in their files and to provide an authenticated copy to the appellant for inspection.

The appellant requests attorney fees and expenses related to this case under RCW 9A.16.110 in the amount of \$15,000.00.

Dated this ²⁵ ~~26~~ day of ^{match} ~~April~~ 2015.

Respectfully submitted,

Appellant,

Richard Severson

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Re Submitted on April 29, 2015

Richard D Severson

Brief of appellant is re submitted in typed form to comply with the Letter dated April 6, 2015 RAP 10.4(a) Font size and margins. The appellant filed a change of address on March 25 when he originally filed this Brief. The Letter from the court of appeals was sent to the old address and not received until April 17, appellant talked to case manager Christina on Mon April 20, which she granted a 10 day extension from April 20, 2015 making the due date April 29, 2015. Brief of appellant - 44

Pierce County No. 13-2-09348-6
Appeal No. 46776-3-II

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STATE OF WASHINGTON

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Court of Appeals, Division II,
of the State of Washington

Richard Severson
appellant,

v.

The Department of Social
and Health Services
Respondent.

Proof of Service re submitting appellants Brief

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